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It was held that cutting and putting into marketable condition was not a producing, which means "giving being or form to," "manufacturing," "making;" nor a procuring, which means "bringing into possession," "obtaining." Furthermore, the court say this was work which the vendor would naturally take in fitting his material for the general market.

It seems probable that this limitation was inserted to avoid the perplexities of the New York rule, *Parsons* v. *Lonts*, 48 N. Y. 652, that the statute does not apply when the chattel is not in existence at the time of making the contract, and to avoid the curious, if just, rule of Massachusetts, *Goddard* v. *Binney*, 115 Mass. 450, that if the vendor makes or prepares for the general market, it is a sale within the statute, and if he makes or prepares to special order, not as he would in the general nature of his trade, it is not a sale within the statute. The latter is a clear case of reading into the statute clauses which the words cannot possibly contain. The former, the New York rule, is based on the earlier English cases, but has not advanced as the English doctrine advanced.

The principal case is another example of the tendency to force from this section an equitable doctrine. But by such a decision the heart of the provision is eaten out. After viewing the attempts of various American jurisdictions to hammer strained rules out of the statute, it is a relief to consider the more natural and literal interpretation of the English courts, *Lee* v. *Griffin*, 1 B. & S. 272, that any contract which is to result in the sale of a chattel is within the statute; or the wisdom of some legislatures, *e. g.* Ohio, in entirely omitting the seventeenth section from their Statute of Frauds.

WINDSCHEID AND v. IHERING.[1] — German legal circles have sustained an irreparable loss in the last two months in the deaths of v. Ihering and Windscheid. The former was perhaps the better known in foreign countries; the latter influenced the development of German law as no other writer in the past twenty-five years.

Rudolph von Ihering gathered around him in his retirement at Göttingen an enthusiastic audience to listen to his brilliant discourses and to participate in the discussions of legal questions. His little book, "Jurisprudence of Daily Life," contains a multitude of hypothetical cases of every-day occurrence such as he was wont to put in his classes. In Göttingen, too, he found the necessary peace and quiet to develop and improve his great work on the "Spirit of the Roman Law," — a work that in these days of Roman law studies well deserves the honor of a translation into English. Ihering's was a philosophical nature; his field of work lay in the domain of the philosophy of the law. The indefiniteness and vagueness incidental to the vastness of philosophical research permeated his writings: his great knowledge of the law itself, in its origin, growth, and development, acted as a corrector: his style attracted the thoughtful reader, even the layman, and thus he did much to popularize the study and the knowledge of law. As editor of the leading law quarterly on Roman law, he contributed much to the solution of practical legal questions. But one of his essays, I believe, has been translated into English, "The Battle for Law," a brilliant plea for the maintenance of principle and individual right, at whatever cost, as the chief factor in the

[1] We are indebted for this note to Julian W. Mack, Esq., of the Chicago bar.

creation and development of a sound body of law for the nation. Incidentally he treats of the Shylock problem.

Bernhard Windscheid was a man of a different type. Cold and slow in his speech, uninteresting in manner, lacking all the graces of the orator, he succeeded in attracting to Leipsic thousands of students by the magic of his name, and in holding their close attention by the profoundness of his reasoning, the clearness of his analysis, the aptness of his illustrations, the absolute logic of all his thought. No book is consulted as much in Germany by jurists, lawyers, and judges, no work is cited as often in every court of the Empire, as Windscheid's "Pandects." It is his one great work; and in it he has accumulated the whole literature of the development of Roman law, from before the time of Justinian to the present day. Each successive edition bears fresh evidence of his critical and analytical powers; a word or two suffices to characterize accurately the value, absolute and relative, of each new monograph or book on any branch of Roman law.

Windscheid was a member of the Commission to prepare a Code of Civil Law for the German Empire, from its inception in 1874 until 1883. His views must have influenced the decision of many a mooted point. But the decisive, though unconscious, influence of the man, or rather of the man as evidenced in his "Pandects," appeared when the first project of the Code was given to the public in 1888. The unanimous cry of the Germanistic school, the chief opponents of the Code, was that it is Windscheid's book with additions. The kernel of truth in the charge, though ground for opposition from those who believe that the spirit of the German and not of the Roman law should be the basis of the Code, was one of its chief merits in the eyes of its friends. Though Windscheid had taken no part in the deliberations of the Commission during its last five years, yet such was the power of his book that his analysis and classification, his views, and ofttimes his very words, had been adopted and perpetuated in the Code. Much will be changed before the Code becomes law, but the feeling in Germany is nearly unanimous that the fundamental lines must remain as recommended by the Commission.

The works of v. Ihering and Windscheid should find a place in every large library in which the pursuit of legal science holds at least some place with the eager search for judicial precedents.

FUSTEL DE COULANGES AND BRUNNER.[1] — In the second volume of his great work on the "History of German Law" Professor Brunner, to whom we are deeply indebted for his investigations into and discovery of the origin of the jury, has an interesting note on Fustel de Coulanges, the celebrated French author of the Ancient City. He says (vol. ii. page 2, note 2), "An exception [to the current of authority that Frankish law is a mixture of legal rules of both Germanic and Roman origin] is Fustel de Coulanges, for whom everything is Roman. Fustel de Coulanges is a man of valuable but peculiarly limited parts. His fundamental method is to take for examination a portion of the sources of law narrowly bounded both as to time and space, and to ignore purposely everything lying beyond this. The result is that he often misunderstands the sources and does not hesitate at violent interpretations in order to sustain the general result that he obtains from his narrow field of research. It

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